

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48913

CHANGE OF CONTRACTOR NAME AND OR TAX IDENTIFICATION NUMBER

CONTRACT NO.071B2200247

hereafter referred as

CONTRACT NO. 071B3200104

between

THE STATE OF MICHIGAN

and

CURRENT NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Canon Solutions America Inc. 12379 Collections Center Drive Chicago, IL 60693	Daniel Larsen	dlarsen@csa.canon.com
	TELEPHONE	NEW CONTRACTOR #, MAIL CODE
	(800) 877-6232 x 7734675	

PREVIOUS NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Oce North America, Inc. 5450 N. Cumberland Ave. Chicago, IL 60656	Daniel Hack	Daniel.hack@oce.com
	TELEPHONE	PREVIOUS CONTRACTOR #, MAIL CODE
	(800) 788-5914	

DESCRIPTION OF CHANGE NOTICE:

THE CONTRACTOR HAS NOTIFIED THE STATE OF MICHIGAN OF A CHANGE IN ITS BUSINESS NAME AND OR TAX IDENTIFICATION NUMBER. DUE TO THE INTERNAL SYSTEMS RELATED TO THE RELEASE OF CONTRACTOR PAYMENTS, A NEW CONTRACT NUMBER MUST BE ASSIGNED. THE NEW CONTRACT NUMBER IS 071B3200104. EXCEPT FOR THE NEWLY-ASSIGNED NUMBER, THE CONTRACT TERMS AND CONDITIONS REMAIN IN EFFECT.

THIS CHANGE IS EFFECTIVE: June 11, 2013

\$453,762.86 REMAINING ON CONTRACT # 071B2200247 TO BE TRANSFERRED TO CONTRACT # 071B3200104.

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOT	Terry Harris	517-335-2507	harrist@michigan.gov
BUYER:	DTMB	Jim Wilson	517-241-1916	Wilsonj4@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: (Descriptive Contract Title (Not always the same language as provided in MAIN))			
Lease with Option to Purchase six total pieces of equipment, which includes 2 Engineering TDS826 Pro Printers/2 Engineering TDS810 Scanners, 1 ColorWave 600 Printer and 1 736-737 Folding Machine			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
4 years, 6 months	January 1, 2013	June 30, 2017	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
54 Monthly Lease Payments	Delivered & Installed	Per Specifications	Chicago, IL
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input checked="" type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			

FOR THE CONTRACTOR:	FOR THE STATE:
Canon Business Solutions, Inc.	Signature
Firm Name	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
Date	Enter Name of Agency
	Date

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

August 9, 2012

CONTRACT NO. 071B2200247
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Oce North America, Inc. 5450 N. Cumberland Ave. Chicago, IL 60656	Daniel Hack	Daniel.hack@oce.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 788-5914	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOT	Terry Harris	(517) 335-2507	harrist@michigan.gov
BUYER:	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Lease with Option to Purchase six total pieces of equipment, which includes 2 Engineering TDS826 Pro Printers / 2 Engineering TDS810 Scanners, 1 ColorWave 600 Printer and 1 736-737 Folding Machine			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 year	July 1, 2012	June 30, 2017	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
60 Monthly Lease Payments	Delivered & Installed	Per Specifications	Chicago, IL
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input checked="" type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$496,965.00

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B2200247
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Oce North America, Inc. 5450 N. Cumberland Ave. Chicago, IL 60656	Daniel Hack	Daniel.hack@oce.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 788-5914	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOT	Terry Harris	(517) 335-2507	harrist@michigan.gov
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60 Monthly Lease Payments	Delivered & Installed	Per Specifications	Chicago, IL
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input checked="" type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of solicitation # 071I1300132 and this Contract Agreement. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$496,965.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #071I1300132. Orders for delivery will be issued directly by the Department of Transportation through the issuance of a Purchase Order Form.

All terms and conditions of the solicitation are made a part hereof.

FOR THE CONTRACTOR:

Oce North America, Inc.

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB Procurement

Enter Name of Agency

Date



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Definitions

This section provides definitions for terms used throughout this document.

Business Day - whether capitalized or not, means any Day other than a Saturday, Sunday, State employee temporary layoff Day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

Buyer – the DTMB-Procurement employee identified on the cover page of this RFP.

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on this RFP, an agreement that has been approved and executed by the awarded bidder, the DTMB-Procurement Director, and the State Administrative Board.

Contractor – the awarded bidder after the Effective Date.

Deleted, Not Applicable - the section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable(s) - physical goods or commodities as required or identified in a Statement of Work.

Eastern Time – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

Effective Date - the date that a binding contract is executed by the final party.

Final Acceptance - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

Post-Industrial Waste - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Purchase Order - a written document issued by the State that requests full or partial performance of the Contract.

State - the State of Michigan.

State Location - any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Stop Work Order - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

Subcontractor - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

Unauthorized Removal - the Contractor's removal of Key Personnel without the prior written consent of the State.

**LEASE SPECIFIC TERMS**

Acceptance Date – is the date on which the Equipment is accepted by Lessee in the manner described in Sections 1.4 and 2.84, Attachment A (Item 2 Installation and Delivery Dates) and Attachment A (Item 4 Terms and Conditions).

Equipment - an all-inclusive term which refers either to individual machines or components, individually or collectively.

Equipment Failure - a malfunction in the Equipment, which prevents or impedes the accomplishment of a job.

Hourly Equipment Rate - the monthly payment including maintenance per unit divided by 160.

Installation Date - the date specified in the contract by which the Contractor must have the ordered Equipment ready (certified) for use by the Lessee.

Lessee - the State of Michigan by its Department of Technology, Management and Budget for the Department of Transportation.

Lessor - the Contractor.

Liquidated Damages - a settlement due the Lessee from the Contractor if the Contractor fails to install and make ready for use by the Lessee the Equipment designated in the contract on or before the installation date specified in contract.

Machine - an individual unit, including special features installed thereon, separately identified by a type and/or model number.

Mechanical Replacement - replacement of one machine for another occasioned by the mechanical condition of the machine being replaced.

Preventative Maintenance - maintenance performed by the Contractor which is designated to keep the Equipment in proper operating condition; it is performed on a scheduled basis

Principle Period of Maintenance (PPM) - will be the same hours as the Lessee 's normal working hours (currently Monday through Friday, 8:00 AM to 5:00 PM, excluding a one-hour lunch period, excepting State observed holidays)

Remedial Maintenance - the maintenance performed by the Contractor which results from Equipment failure and which is performed as required, and, therefore, on an unscheduled basis.



Article 1 – Statement of Work

1.1 Project Identification

1.1.1 Project Request

This is a Contract for a five (5) year Lease with Option to Purchase six total pieces of Equipment, which includes 2 Engineering TDS826 Pro Printers / 2 Engineering TDS810 Scanners, 1 ColorWave 600 Printer and 1 736-737 Folding Machine with Monthly Maintenance Service to be used in producing prints for the design and construction of Michigan Department of Transportation business.

1.1.2 Background – Deleted – Not Applicable

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope – Deleted – Not Applicable

1.2.2 Deliverable(s)

The Contractor must provide the following deliverables and maintenance as listed:

- 1) **Attachment A, Lease Specific Terms and Conditions**
- 2) **Attachment B, Contract Price – for six total pieces of equipment, which includes 2 Engineering TDS826 Pro Printers / 2 Engineering TDS810 Scanners / 1 ColorWave 600 Printer and 1 736-737 Folding Machine with Monthly Maintenance Service.**
- 3) **Attachment C, Specifications**
- 4) **Attachment D, Maintenance of Equipment - A through I**
- 5) **Attachment E, Total Quality Customer Satisfaction Guarantee**

1.2.3 Quantity

The Contractor agrees to supply all that the State requires within the scope of this Contract.

1.2.4 Ordering

The State will issue a Purchase Order, which must be approved by the Contract Compliance Inspector, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

1.3 Management and Staffing

1.3.1 Project Management

The Contractor will carry out this project under the direction and control of MDOT Engineering Print Services. The Project Leader is:

Mike Fiero, Engineering Print Supervisor

Department of Transportation

MDOT Photo Lab, 7050 Harris Drive, State Secondary Complex, Dimondale, MI 48918

FieroM@michigan.gov

Phone: (517) 322-1675

Fax: (517) 322-1395



1.3.2 Reports

The Contractor shall be able to provide other various reports when requested by the State that include, itemized report of total items (commodities and services) purchased, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

1.3.3 Staff, Duties, and Responsibilities

Contractor's Key Personnel and physical location during Contract performance:

Daniel Hack, Senior Account Manager
Océ North America, Inc.
750 Stephenson Highway, Suite 100
Troy, MI 48083
Phone: (800) 788-5914
Email: daniel.hack@oce.com

1.3.4 Meetings

The State may request meetings as it deems appropriate.

1.3.5 Place of Performance

All of the service performed on the provided Equipment under this awarded Contract shall be executed on-site at the deliverable location listed below:

Michigan Department of Transportation
Engineering Print-Forms Storeroom
Secondary Complex
7050 Harris Drive
Lansing, MI 48909

1.3.6 Reserved

1.3.7 Binding Commitments

The Contractor identifies its representatives with the authority to make binding commitments on the Contractor's behalf and state the extent of that authority, as follows:

Jack McNulty (Vice President – WFPS Finance) is authorized as an Océ WFPS Signatory, of which authority is extended to bind Océ WFPS to Bids, Océ North America, Inc. Customer Agreements, and other than standard company Contracts.

Sal Sheikh (Vice President – WFPS Marketing) is authorized as an Océ WFPS Signatory, of which authority is extended to bind Océ WFPS to Bids, and other than standard company Contracts.

1.3.8 Training

The Contractor shall provide in-service training for State personnel to achieve the level of proficiency necessary along with training on products, installation and product safety issues. In addition, the Contractor shall provide a technical representative to solve minor problems/questions by phone or on-site training jointly with the State as needed during the period covered by this contract at no additional charge.

1.3.9 Security

The Contractor may be required to make frequent deliveries to State facilities. The Contractor shall ensure the security and safety of these facilities, including, but not limited to, performance of background checks on its personnel. The Contractor shall perform background checks, and be able to provide data that includes: what the background check consists of, the name of the company that performs the background checks, whether the Contractor uses uniforms and ID badges, etc. The Contractor must be able to provide a document stating that its personnel have satisfactorily completed a background check and are suitable for State work.



The State may decide to perform an additional background check under Section 2.4.9, Background Checks. If so, the Contractor must provide a list of all personnel, including name and date of birth that will be assigned to State work.

1.4 Delivery and Acceptance

1.4.1 Time Frames

All Deliverable(s) shall be delivered within 30 Days after receipt of order.

1.4.4 Palletizing – Deleted - Not Applicable

1.4.5 Delivery Term

The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the location specified below:

Michigan Department of Transportation
Engineering Print-Forms Storeroom
Secondary Complex
7050 Harris Drive
Lansing, MI 48909

The Contractor must ship the Deliverable(s) "F.O.B. Destination, within Government Premises."

The State will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8.4, Acceptance of Deliverable(s) and Section 1.4.7, Criteria, unless otherwise defined in this section.

1.4.7 Criteria

The State will use the following criteria to determine acceptance of Deliverable(s):

- 1) The Contractor has completed installation of 2 Engineering TDS826 Pro Printers / 2 Engineering TDS810 Scanners / 1 ColorWave 600 Printer and 1 736-737 Folding Machine.
- 2) All units are tested and are in good working condition.
- 3) All Engineering Print personnel have received training on the Equipment and they have a good understanding of what it takes to use and maintain the Equipment on a daily basis.
- 4) The Contractor will keep the Equipment in operational condition.
- 5) The Contractor will maintain Equipment with four hour service response time throughout the duration of the Contract.
- 6) The Contractor will provide additional training for new State personnel at no additional cost to the State.

1.5 Proposal Pricing

1.5.1 Pricing

The pricing details are provided in **Attachment B – Contract Price**.

1.5.2 Quick Payment Terms – Deleted – Not Applicable

1.5.3 Price Term

Contract Prices are firm for the term of this Contract.

**1.5.4 Tax Excluded from Price**

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. DTMB-Procurement will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the Contractor's prices must not include the Federal Excise Tax.

1.5.5 Invoices

The Contractor must submit invoices that at a minimum, includes:

- (a) Date
- (b) PO #
- (c) Quantity
- (d) Deliverable
- (e) Unit Price
- (f) Shipping Cost (if any)
- (g) Total Price

1.6 Commodity Requirements**1.6.1 Customer Service**

The Contractor is able to receive orders by any of the following methods: electronically, phone, facsimile transmission, or by written order. The Contractor shall have internal controls, approved by DTMB-Procurement, to: (a) ensure that only authorized individuals place orders; and (b) verify any orders that appear to be abnormal.

The Contractor shall have: (a) one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (b) a statewide toll-free number for customer service calls. The Customer Service Contact is written below:

Daniel Hack, Senior Account Manager
Oce North America, Inc.
Phone: (800) 788-5914
Email: daniel.hack@oce.com

1.6.2 Research and Development – Deleted - Not Applicable**1.6.3 Quality Assurance Program – Deleted - Not Applicable****1.6.4 Warranty for Deliverable(s)**

The warranty information is stated below:

To the extent Contractor is responsible under this Contract for maintaining Equipment/System(s), Contractor represents and warrants that it will maintain such Equipment/System(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the term of this Contract. The Contractor represents and warrants that the Equipment/System(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first Day following Final Acceptance.



Within one (1) State Business Day of notification from the State, the Contractor shall adjust, repair or replace all Equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor agrees that all warranty service it provides under this Contract shall be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the OEM, including any replacement, upgraded, or additional Equipment warranties.

All warranty work shall be performed on the State of Michigan worksite(s).

1.6.5 Special Incentives – Deleted – Not Applicable

1.6.6 Energy Efficiency

The Contractor's Equipment leased to the State under this Lease Agreement are all "Energy Star" certified products.

1.6.7 Environmental Requirements

The State prefers to purchase products that impact the environment less than competing products. Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals.

The Contractor's leased Equipment listed in this Contract all meets the 2007 ENERGY STAR criteria.

The Contractor's products are 1000% lower than legal standards and about one-tenth the ozone emissions of conventional printing technologies.

The Contractor's Radiant Fusing technology used in all the Eco Design printers require no warm-up time and instantly returns to sleep mode after printing.

The Contractor is able to reuse or recycle at least 95% of its wide format printing systems at the end of their life. This is after they go through remanufacturing and asset recovery.

The Contractor has a process and program in place for recovering and recycling in the most environmentally safe way.

The Contractor's warranty and maintenance program will support printing on 30% post-consumer waste recycled media 100% of the time.

1.6.8 Recycled Content and Recyclability

(a) **Deliverable(s).** Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials. The Contractor has provided an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

95 % (total estimated percentage of recovered material)

30 % (estimated percentage of post-consumer material)

30 % (estimated percentage of post-industrial waste)

(b) **Packaging.** The State prefers packaging materials that:

- (i) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
- (ii) minimize or eliminate the use of polystyrene and other difficult to recycle materials;



- (iii) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
- (iv) provide for a return program where packaging can be returned to a specific location for recycling; and
- (v) contain materials that are easily recyclable in Michigan.

1.6.9 Materials Identification and Tracking

(a) **Hazardous Chemical Identification.** The Contractor must list any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

Chemical (if none, enter 'None')	Identification Number
None	

(b) **Mercury Content.** Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible. The Contractor must explain if it intends to provide products containing mercury and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the Contractor must disclose the amount or concentration of mercury and justification as to why this particular product is essential. All products containing mercury must be labeled as containing mercury.

(c) **Brominated Flame Retardants.** The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs.

(d) **Environmental Permits and Requirements.** The Contractor must disclose whether any of its facilities are in violation of any environmental laws. The Contractor must immediately notify DTMB-Procurement of the receipt of any EPA, State, or local agency communication indicating that any of the Contractor's facilities are in violation of applicable environmental laws.

1.7 Extended Purchasing

1.7.1 MiDEAL- Deleted Not Applicable



Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins July 1, 2012 and expires June 30, 2017. All outstanding Purchase Orders will expire upon the termination of this Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Procurement. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

2.1.2 Options to Renew

This Contract may be renewed for up to two additional one-year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 Days before expiration of this Contract.

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s) and for all of the associated payment milestones and amounts.

2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 Days after receipt.

2.2.3 Invoicing and Payment

60 Monthly Payments for all Equipment – To be paid on the second Day of each month.

2.2.4 Pro-ration – Deleted - Not Applicable

2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

2.2.6 Electronic Payment Requirement

As required by MCL 18.1283a, the Contractor must electronically register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer (EFT) payments.

2.2.7 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.



2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by DTMB-Procurement on behalf of Michigan Department of Transportation (State). **DTMB-Procurement is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Procurement for this Contract is:

Don Mandernach, Buyer
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: mandernachd@michigan.gov
Phone: (517) 241-7233

2.3.2 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a Day-to-Day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Mike Fiero, Engineering Print Supervisor
Department of Transportation
MDOT Photo Lab, 7050 Harris Drive, State Secondary Complex, Dimondale, MI 48918
FieroM@michigan.gov
Phone: (517) 322-1675
Fax: (517) 322-1395

2.3.3 Project Manager - Deleted - Not Applicable

2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect this Contract.

(b) The State or the Contractor may propose changes to this Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Procurement will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of this Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change.

2.3.5 Price Changes

Firm Fixed for the term of this Contract.

2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered



mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DTMB-Procurement
Attention: Don Mandernach
PO Box 30026
530 West Allegan
Lansing, MI 48909
Email: mandernachd@michigan.gov
Fax: (517) 335-0046

If to Contractor:

Daniel Hack, Senior Account Manager
Oce North America, Inc.
750 Stephenson Highway, Suite 100
Troy, MI 48083
Email: daniel.hack@oce.com

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.3.7 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under this Contract.

2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 Days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on this Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

2.3.9 Equipment – Deleted- Not Applicable

2.3.10 Facilities – Deleted- Not Applicable

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

**2.4.2 Contractor Personnel**

The Contractor must provide the Contract Compliance Inspector with the names of Personnel assigned to this Contract. See Article 2.3.2 for contact name.

2.4.3 Removal or Reassignment of Personnel at the State's Request – Deleted - Not Applicable**2.4.4 Contractor Personnel Location – Deleted - Not Applicable****2.4.5 Contractor Identification**

The Contractor's employees must be clearly identifiable while on State property, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to this Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

2.4.7 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of this Contract.

2.4.8 Contractor Return of State Equipment/Resources – Deleted - Not Applicable**2.4.9 Background Checks**

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

2.4.10 Compliance with State Policies

All Contractor personnel must comply with the State's security and acceptable use policies for State IT Equipment and resources, available at <http://www.michigan.gov/pcpolicy>. Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT Equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

2.5 Subcontracting by Contractor**2.5.1 Contractor Responsible**

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

2.5.2 State Approval of Subcontractor

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Procurement gives prior approval to the delegation. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the Effective Date. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.



(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

2.5.3 Subcontract Requirements

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

2.5.4 Competitive Selection

Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

2.6 Reserved

2.7 Performance

2.7.1 Time of Performance

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.7.2 Service Level Agreements – Deleted - Not Applicable

2.7.3 Liquidated Damages

The installation dates of the equipment set forth in the Contract have been fixed so that the utilization of the equipment is consistent with the timing schedules of Lessee's programs. If any of the units of equipment are not installed within the time specified in Contract, the delay will interfere with the proper implementation of the Lessee's programs utilizing the equipment leased with option to purchase pursuant to this contract, to the loss and damage of the Lessee. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damage sustained in the event of any such delay. The Lessee and the Contractor, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amount set forth below, and they agree that in the event of any such delay, the Contractor shall pay such amount as liquidated damages and not as a penalty.

The Lessee, at its option, for amounts due the Lessee as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

a. Equipment

1. If the Contractor does not install or delivery the system and/or machines (designated by the Contractor's type and model number), and special features and accessories included in Contract with the system and/or machines, ready for use, on or before the installation date, the Contractor shall pay to the Lessee, as fixed and agreed, liquidated damages for each calendar day between the delivery date specified in Contract and the date of the certification for such equipment, but not more than 180 calendar days in lieu of all other damages due to



such non installation, an amount of 1/30th of the monthly minimum payment (including contracted maintenance) for the system.

2. If some, but not all, of the machines on Contract are installed or delivered ready for use, by the installation date, and the Lessee makes operational use of any such installed machines, liquidated damages shall not accrue against the machines used. The use of machines for scheduled program development shall be included as operational use.

3. If the delay is more than thirty (30) calendar days, then by written notice to the Contractor, the Lessee may terminate the right of the Contractor to install and may obtain substitute equipment. In this event, the Contractor shall be liable for liquidated damages in the amounts specified above until acceptable substitute equipment is installed, ready for use, or for 180 days from the installation date, whichever occurs first. The Contractor shall also be liable for outbound preparation and shipping costs for contracted items returned under this clause.

b. Exception

Except with respect to defaults of subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the delays must be beyond the control and without the fault or negligence of the Contractor. If the delays are caused by the default of a subcontractor, if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of any of them, the Contractor shall not be liable for liquidated damages for delays unless the supplies or services to be furnished by the subcontractors were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

2.7.4 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, Equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of this Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.



The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

2.8 Acceptance of Deliverable(s)

2.8.1 Quality Assurance

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

2.8.2 Delivery Responsibilities

See Section 1.4.5 for Delivery Terms.

2.8.3 Process for Acceptance of Deliverable(s)

The State's review period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify the State's review period, it is by default 30 Days for a Deliverable (State Review Period). The State will notify the Contractor by the end of the State Review Period that either:

- (a) the Deliverable is accepted in the form delivered by the Contractor;
- (b) the Deliverable is accepted, but noted deficiencies must be corrected; or
- (c) the Deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the Deliverable.

If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

2.8.4 Acceptance of Deliverable(s)

(a) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s).

(b) The State may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If the State determines that the Deliverable or one of its components has material deficiencies, the State may reject the Deliverable without performing any further inspection or testing.

(c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct, within a reasonable time at the Contractor's expense, all deficiencies in the Deliverable that remain outstanding at the time of State approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep this Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of the State's cost to cure the deficiency; or (iii) fully or partially terminate this Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies



discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(e) The State, at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

2.8.5 Process for Approval of Written Deliverable(s) – Deleted - Not Applicable

2.8.6 Process for Approval of Services

See Section 1.2.2.

2.8.7 Final Acceptance

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the State following the applicable State Review Period.

2.9 Ownership – Deleted - Not Applicable

2.10 State Standards – Deleted - Not Applicable

2.11 Confidentiality

2.11.1 Confidential Information

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (a) disclosable under the Michigan Freedom Of Information Act (FOIA);
- (b) now available or becomes available to the public without breach of this Contract;
- (c) released in writing by the disclosing party;
- (d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
- (e) publicly disclosed pursuant to federal or state law; or
- (f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.11.2 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any

Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

2.11.3 Exclusions

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the



furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.11.4 No Obligation to Disclose

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.11.5 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 Days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.12 Records and Inspections

2.12.1 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 Days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.12.2 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.12.3 Examination of Records

The State, upon 10 Days' notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

2.12.4 Audit Resolution

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 Days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

2.12.5 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of this Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 Days of the last invoice on which the balance appeared or upon termination of this Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.



2.13 Warranties

2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the Equipment, software, and services necessary for the Deliverable(s) to comply with this Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any Equipment, software, or other Deliverable(s) for the State (including Equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two Days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of this Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Procurement if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after this Contract is awarded.

2.13.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

**2.13.3 Warranty of Fitness for a Particular Purpose**

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

2.13.4 Warranty of Title

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.13.5 Equipment Warranty

See Article 1.6.4

2.13.6 New Deliverable(s)

The Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new. Unless specified in Article 1, Statement of Work, Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable only where the Contractor does not have knowledge or the ability to select one or the other. The State must provide written acceptance of any used parts.

2.13.7 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of this Contract, unless DTMB-Procurement has approved a change order under Section 2.3.4, Contract Changes.

2.13.8 Consequences for Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

2.14 Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 Days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(iv) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(b) The Contractor must:

(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.



- (ii) waive all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
- (iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- (iv) obtain insurance, unless the State approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
- (v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
- (vi) pay all deductibles.
- (vii) pay for and provide the type and amount of insurance checked ☒ below:

☒ **(A) Commercial General Liability Insurance**

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;
 \$2,000,000 Products/Completed Operations Aggregate Limit;
 \$1,000,000 Personal & Advertising Injury Limit; and
 \$1,000,000 Each Occurrence Limit.

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company except in instances of acts of gross negligence of the State.

☐ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

\$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☒ **(C) Motor Vehicle Insurance**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:



The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the vehicle liability certificate. The Contractor must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☒ **(E) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed except in instances of acts of gross negligence of the State.

☒ **(F) Employers Liability Insurance**

Minimal Limits:

\$100,000 Each Accident;
\$100,000 Each Employee by Disease
\$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insured's on the certificate.

2.14.2 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.14.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 Days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, except for 10 Days for nonpayment of premium, to the Director of DTMB-Procurement. The notice to the Director of DTMB-Procurement must include the applicable Contract or Purchase Order number.

2.15 Indemnification

**2.15.1 General Indemnification**

To the extent permitted by law, the Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.15.2 Code Indemnification – Deleted - Not Applicable**2.15.3 Employee Indemnification**

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.15.4 Patent/Copyright Infringement Indemnification

(a) To the extent permitted by law, the Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of Equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of Equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the Equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with Equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) Equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the Equipment, software, or commodity in a configuration other than implemented or approved by the

Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the Equipment, software, or commodity with Equipment, software, or commodities not supplied by the Contractor under this Contract.

2.15.5 Continuing Obligation

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of this Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.15.6 Indemnification Procedures

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in



taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 Days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 Days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

2.15.7 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 Days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.16.2 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.



(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.16.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 Days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

2.16.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 Days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 Days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 Days' notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a State, public, or private Contract or subcontract.

2.16.6 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed



through the effective date of the termination. This Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.16.7 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must:
 - (i) stop all work as specified in the notice of termination;
 - (ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
 - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
 - (iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of this Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
 - (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
 - (vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.
- (b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.
- (c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.16.8 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable Equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 90 Days from the date of termination. The Contractor must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.17 Termination by the Contractor

**2.17.1 Termination**

If the State breaches this Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 Days) to cure the breach.

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates this Contract.

2.18 Stop Work – Deleted - Not Applicable**2.19 Reserved****2.20 Dispute Resolution****2.20.1 General**

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Procurement, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 Days of the meeting with the Director of DTMB-Procurement, or such other time as agreed to by the parties, the Director of DTMB-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Procurement within 21 Days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Procurement is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Procurement will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of this Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.20.4 Continued Performance

Each party will continue performing its obligations under this Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate this Contract as



provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

2.21 Disclosure Responsibilities

2.21.1 Disclosure of Litigation

(a) Within 30 Days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

2.21.2 Other Disclosures

The Contractor must notify DTMB-Procurement within 30 Days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.

2.21.3 Call Center Disclosure

The Contractor and all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

2.22 Extended Purchasing - Deleted - Not Applicable

2.22.3 State Employee Purchase Requirements - Deleted - Not Applicable

2.23 Laws

2.23.1 Governing Law

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

2.23.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).



2.23.3 Jurisdiction

Any dispute arising from this Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

2.23.4 Nondiscrimination

In the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of this Contract.

2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to this Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of this Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

2.23.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

2.23.7 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

**2.23.8 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.23.9 Prevailing Wage – Deleted - Not Applicable**2.23.10 Abusive Labor Practices**

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

2.24 General Provisions**2.24.1 Bankruptcy and Insolvency**

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 Days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

2.24.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

2.24.3 Contract Distribution

DTMB-Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Procurement.

2.24.4 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of this Contract.

2.24.5 Website Incorporation

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

2.24.6 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the



right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Contractor offering free assistance) to gain a competitive advantage on the RFP

2.24.7 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of this Contract.

2.24.8 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

2.24.10 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

2.24.11 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Attachment A, Lease Specific Terms and Conditions;
- (b) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);
- (c) The most recent Statement of Work related to this Contract;
- (d) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);
- (e) Any attachment or exhibit to the Contract documents;
- (f) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under this Contract; and
- (g) Bidder Responses contained in any of the RFP documents.

2.24.12 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

2.24.13 Form, Function and Utility

If this Contract is for statewide use, but the Deliverable(s) does not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.

2.24.14 Reformation and Severability

Each provision of this Contract is severable from all other provisions of this Contract. If any provision of this Contract is held unenforceable, then this Contract will be modified to reflect the parties' original intent. All remaining provisions of this Contract remain in full force and effect.

2.24.15 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

**2.24.16 No Waiver of Default**

Failure by a party to insist upon strict adherence to any term of this Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of this Contract.

2.24.17 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

**Attachment A – Lease Specific Terms and Conditions****1. TERM OF LEASE**

- a. The "Commencement Date" for this Lease is the date on which the Equipment is accepted by Lessee in the manner described in Sections 1.4 and 2.84, Attachment A (Item 2 Installation and Delivery Dates) and Attachment A (Item 4 Terms and Conditions).
- b. Contractor shall designate the installation date, and, if applicable, removal dates of each machine to be leased under this agreement.
- c. The purchase price of Equipment shall not increase for the life of the Lease.
- d. Should the Lessee elect to exercise any Lease extension or purchase option, the Contractor shall offer continued maintenance support for a term negotiated by the parties.

2. INSTALLATION AND DELIVERY DATES

- a. Equipment
 - (1) The Contractor shall supply Equipment ready for use as specified in this Contract.
 - (2) Installation dates may be advanced by mutual consent of the Contractor and the Lessee by amendment to Contract. On advance of any installation date, the Contractor shall receive written notice from the Lessee at least 30 Days prior to the advance installation date.
 - (3) The Lessee reserves the unilateral right to delay any installation. The Contractor shall receive written notice from the Lessee at least 30 Days prior to the scheduled installation date.
 - (4) If the Equipment is certified to be ready for use prior to the installation date, the Lessee, at its option, may elect to use the Equipment and change the installation date accordingly. In this event, the Contract shall be amended accordingly.

3. LIQUIDATED DAMAGES

See Section 2.7.3

4. TERMS OF USE

- a. Invoices and Payments
 - (1) The Contractor shall certify in writing to the Lessee on the installation date that the Equipment is installed and ready to use.
 - (2) The Contractor will render invoices for monthly charges. The Lessee shall pay all such invoices in accordance with the Lessee's standard payment procedure as specified in Public Act #279 of 1984.
 - (3) Payment for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable monthly charge for each Day the Equipment was installed, except that the 31st Day of any month will not be included in the computation of partial month billing for discontinued Equipment. This partial month billing can only occur for the first month of operation. Subsequent bills are to be monthly costs only.

5. SITE PREPARATION

- a. Site preparation specifications for Equipment listed in Contract shall be furnished by the Contractor promptly upon request by the Lessee. These specifications shall be in such detail to ensure that Equipment to be installed shall operate efficiently from the point of view of environment.



- b. The Lessee will prepare the sites as specified by the Contractor. Subsequent alterations or modifications in site preparation required by the Contractor, which are attributable to Contractor's requirements and which involve additional expense to the Lessee, shall be made at the expense of the Contractor.
- c. If any such site alterations as specified in sub paragraph b. above cause a delay in the installation, the provisions of Paragraph 4 will apply.
- d. The Contractor will notify the Lessee in writing as to the adequacy of the Lessee's planned layout of the Equipment within 10 Days after receipt of the Lessee's plan.

6. TRANSPORTATION, INSTALLATION, RELOCATION AND RETURN OF EQUIPMENT

a. Transportation

- (1) Shipments to site(s) specified by the Lessee shall be made at the cost as indicated in the Contract.
- (2) Transportation charges for the shipment of empty packing cases shall be paid by the Contractor except when Equipment is moved from one Lessee location to another.
- (3) Transportation charges, regardless of point of origin or destination of the Equipment, shall not exceed the cost of shipment between the Lessee's location and the location of the Contractor's nearest plant of manufacture for each component.
- (4) The Contractor shall bear the cost of transportation when the Equipment is replaced at the Contractor's request, unless replacement was due to fault or negligence of the Lessee.

b. Installation

- (1) The Lessee shall pay only those rigging and drayage costs as indicated in the Contract.
- (2) When Equipment is moved for mechanical replacement purposes, the Contractor shall pay all rigging and drayage costs, unless replacement was due to fault or negligence of the Lessee.
- (3) Supervision of placement of Equipment shall be furnished by the Contractor without charge to the Lessee.

c. Relocation

- (1) The State reserves the right to move the Equipment acquired under this contract from one State office to any other State office within the State.
- (2) The State will notify the Contractor in writing of all Equipment relocations within 30 Calendar Days following the move.
- (3) The State will provide a relocation site that conforms to the Contractor's specification according to Contractor.
- (4) The State shall arrange and pay for all transportation, rigging, drayage and any other relocation charges.
- (5) Rearrangement of Equipment within the same office for Lessee's convenience shall be at the Lessee's expense.
- (6) Relocations must be coordinated and conducted by Océ.



d. Return of Equipment

- (1) If Equipment is returned to the Contractor for failure to fulfill contractual obligations, the following procedure will be used:
 - a. Within 20 Days of written notification to the Contractor, the Equipment will be prepared by the Contractor for removal and shall provide the Lessee with required shipping instructions.
 - b. Within 30 Days, the Lessee shall ship the Equipment in accordance with instructions (d1.a).
 - c. All shipping costs will be borne by the Contractor.
- (2) If Equipment is returned to the Contractor for non-appropriation, Lessee agrees to peaceably deliver the Equipment to Lessor at the location(s) specified by Lessor; or allow Lessor to peaceably obtain possession of the Equipment.

7. **TITLE**

Title to Equipment, accessories and devices Leased with Option to Purchase under this Contract shall remain with the Contractor until the State makes the final payment. If the purchase option is exercised by the State title will pass to the State at that time.

8. **PURCHASE OPTION**

Lessee reserves the right to exercise a purchase option for the Equipment at the end of the Contract term for Fair Market Value (FMV). If the State exercises the option to purchase any or all of the Equipment, Lessor shall transfer any and all of its rights, title, and interest to the Equipment and covenant to Lessee that the Equipment is free of any liens or encumbrances.

The parties have agreed and determined that the amount to be paid to Contractor for purchase of the equipment under this Lease (at the end of the Contract term) is not in excess of the total FMV of the Equipment (at the end of the contract term).

For the purpose of this Contract, the FMV is an estimated amount, expressed in terms of money that may reasonably be expected for this equipment, between the State and the Contractor, with equity to both, neither under any compulsion to buy or sell and both fully aware of all relevant facts, as of a specific date. In making such determination, consideration will be given to the costs of the Equipment, the uses and purposes served by the Equipment and the benefit that will accrue to the parties by reason of this Lease and to the general public by reason of Lessee's use of the Equipment. Contractor understands that as of the date of execution of this Lease, The Lessee has an appropriation for the Equipment for the current fiscal year, as defined in 1984 PA 431, MCL 18.1491.

9. **LEASE PAYMENTS**

This Contract is a five (5) year lease.

Lessee shall promptly pay "Lease Payments" as described in Attachment B to this Lease, exclusively from funds appropriated for Lease of the Equipment. Pursuant to 1984 PA 279, MCL 17.51-17.57. Lease Payments consist of principal and no interest. *Contractor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments under this Lease shall constitute a current expense of the State of Michigan and shall not in any way be construed to be a debt or general obligation of the State of Michigan in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, including, but not limited to, Const 1963, art 9, §§12, 17, nor shall anything contained herein or in a Lease constitute a pledge of the general tax revenues, credit, funds or monies of the State*

10. **NO REMEDY EXCLUSIVE**



No remedy herein conferred upon or reserved to Contractor or Lessee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity.

11. MISCELLANEOUS PROVISIONS

This Lease constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Lease supersedes all proposals, or other prior agreements, and all other communications, oral or written, between the parties relating to this Lease and the Equipment described herein. This Lease shall inure to the benefit of and shall be binding upon Contractor and Lessee and their respective successors and assigns. References herein to "Contractor" shall be deemed to include each of its assignees and subsequent assignees from and after the effective date of each assignment. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof. This Lease may be amended by mutual written consent of Contractor and Lessee.

This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of this Lease.

12. WARRANTY

See Section 1.6.4 of the Contract.



Attachment B, Contract Price

Sixty (60) month lease with option to buy six total pieces of equipment, which includes 2 Engineering TDS826 Pro Printers / 2 Engineering TDS810 Scanners, 1 ColorWave 600 Printer and 1 736-737 Folding Machine with Monthly Maintenance Service. Pricing listed below includes all printer hardware and monthly maintenance and 1,200,000 square feet per year for each machine.

Manufacture:	Oce
Model:	(2) TDS826 (2) TDS810 (1) ColorWave600
Monthly Cost Per Unit	TDS826 = \$2397.61 TDS826 = \$2397.61 TDS810 = \$783.38 TDS810 = \$783.38 ColorWave600 = \$1266.86

Excess square feet to be billed at

Cost Per Square Foot	(2) TDS826 = \$.00789 ColorWave600 = \$.67
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Sixty (60) month lease with option to buy of one (1) folding machine compatible with the above mentioned Engineering Copiers, Printers, and Scanners.

Manufacture:	Oce
Model:	736-737
Monthly Cost Per Unit	\$653.91

Total Five (5) Year Lease Cost of all Equipment. *Does not include Excess square footage fee.	\$496,965.00
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Lease Payment Schedule

Monthly Payment for all six pieces of equipment – To be paid on the second Day of each month. *Does not include Excess square footage fee.	\$8,282.80
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Attachment C. Specifications

- Single manufacture of scanner, printer, folder and color printer. (No 3rd party accountability).

- Single Contractor that manufactures, sells, services and leases.

Engineering Copier/Printer/Scanner with one Folder

- 400 dpi printing at ten E sizes per minute and 400 dpi scanning at eight E sizes per minute.

- Settings editor, print queue, history queue and inbox for tracking printed jobs, preprinted jobs and scans.

- Reprint already printed jobs and print additional sets.

- Management of job queues, machine settings, system settings and media status.

- Scanner with ability to view scans in real time, true 400 x 400 dpi, 30' plus per minute scan speed, original face up, original width of 8.5" to 36".

- Concurrent scanning and printing, multi copy mode, 1-999 copies.

- Programmable destinations including scan to web, scan to network and scan to controller at 200, 300 or 400 dpi in Tiff, Cals and PDF format.

- Folder with ability to fold down to 8.5"x11" as prints come off printer.

Color Printer

- 4 roll color printer capacity up to 42" wide.

- CMYK colors.

- Embedded controller with real time operating system.

- Print on bond (20lb-32lb), polyester films, translucent, Vellum and Tyvek

- 1200 dpi printing capability.

- 1000' plus per hour print speed.

**Attachment D - Maintenance of Equipment**

- a. Contractor shall be responsible for any required preventative maintenance for the term of this Contract. Preventative maintenance must be performed at no additional cost, between the hours of 8:00 AM to 5:00 PM, at a time agreeable to the Lessee.
- b. Contractor must supply, upon request, a monthly service report to the designated representative of Lessee for service performed. The monthly report shall commence only at the specific written request of the contract administrator.

The following information is required on the Contractor Service Report:

- *Serial/Model number of Equipment being repaired
 - *Service performed
 - *Date/Time Equipment repaired
 - *Date/Time service request received
 - *Location of service
 - *Cause of breakdown or need of service
 - *Service field engineer's name performing service
 - *Service report control number
 - *Replacement part description
- c. Principle Period of Maintenance (PPM) will be the same hours as the State's normal business hours (currently Monday through Friday, 8:00 AM to 5:00 PM, excluding a one (1) hour lunch period, excepting State observed holidays).
 - d. The PPM hours may be changed upon 30 Days written notice by mutual agreement, except that the Contractor shall make every reasonable effort to change his schedule in a shorter period of time.
 - e. All repairs performed must be guaranteed for 30 Days.
 - f. The State has the option to switch the type of maintenance for any or all devices with thirty Days written notice.

The Contractor shall normally respond within an average of (8) PPM hours after notification by the State that the Equipment is inoperative. The Equipment shall be repaired within an average of (4) PPM hours of arrival at the site. If the Contractor fails to repair the Equipment within the above period, the Contractor shall allow credit, for each calendar day the Equipment is inoperative, in the amount of 1/30 of the monthly minimum maintenance charge for Equipment furnished by the Contractor that is not operable as a result of the inoperative Equipment. Equipment which experiences repeated failures may be deemed unreliable Equipment under (h) below.

- g. Malfunction Reports

The Contractor shall furnish a malfunction incident report to the State upon completion of each maintenance call. Such reports shall initiate at the request of the Contract Administrator and shall continue until designated to halt. The report shall include, as a minimum, the following:



1. Date and time (hours, minutes, and a.m. or p.m.) notified (to be supplied by user and verified by Contractor).
2. If applicable, date and time (hours, minutes, and a.m. or p.m.) of arrival (to be supplied by user and verified by Contractor).
3. Type and model number(s) of machine(s).
4. Time (hours, minutes, and a.m. or p.m.) repair completed.
5. Description of malfunction (Equipment or software).
6. If charges are applicable, the estimated full amount.

h. Unreliable Equipment

In the event of Equipment failure to the degree that productivity is seriously impaired; the State shall call for a review of the malfunction reports for the preceding 60 Calendar Days.

In the event of Equipment failure to the degree that productivity is seriously impaired; the State shall call for a review of the malfunction reports for the preceding 60 working days. This will be the basis for such review.

If accumulated malfunction time (determined by the malfunction reports) for this period is equal to or exceeds 5 work days excluding travel during this 60 working day period, the State at its option may declare that productivity has been seriously impaired. The malfunction condition(s) shall be corrected within five (5) working days of such review. If the condition(s) is not corrected, the State reserves the option to require the Contractor to replace the Equipment, in whole or in part, or provide suitable substitute Equipment acceptable to the State as a loan without additional charge to the State. At the end of the five working day period and upon written notice to the Contractor, the State may exercise other options to initiate termination proceedings as provided hereunder. The Contractor is obligated to continue in compliance with contractual terms contained herein until such options are exercised.

When the Contractor provides replacement Equipment or substitute Equipment, charges will be limited to normal monthly charges for the Equipment replaced or for substitute Equipment, whichever is less.

The Contractor shall be liable for all outbound preparation and shipping costs for Equipment returned pursuant to this provision.



Attachment E – Total Quality Customer Satisfaction Guarantee

Total Quality Customer Satisfaction Guarantee



Canon
CANON GROUP

Océ North America is committed to Total Customer Satisfaction by providing the highest quality products and services.

We have demonstrated this commitment for equipment, technical service, logistics, and systems support. Consistent Quality and Total Customer Satisfaction are long term, ongoing commitments at Océ.

The strength of these commitments is expressed in the following guarantee:

Océ is committed to providing you with the world's finest products and services backed by our Total Quality Customer Satisfaction Guarantee for your satisfaction. Our Guarantee commits us to promptly repair any Océ equipment that you purchase, rent or lease from us that fails to perform for you in accordance with its published specifications, provided such equipment is continually covered under our equipment maintenance agreement, such failure is not caused by accident or misuse, you use supplies approved by us, and you comply with the terms of your sales, rental, license, lease and service agreements, as applicable, pertaining to such equipment. The Guarantee applies for a period of three years from the date of installation, or the end of the term of your lease, rental, or maintenance agreement, whichever occurs first. This Guarantee does not apply to used equipment or products or to continuous feed equipment. In the event the equipment cannot be repaired, Océ in its sole discretion will replace the equipment with a similar model at no cost to you. Finally, if, in your opinion, we have failed to satisfy you in any way at any time, you may call your sales representative or your service manager at 800-627-1113.

Customer Name _____

Address, City, State, Zip _____

Date of Installation _____

Offered By _____

Model _____

Sales Executive _____

Attach this guarantee to all equipment order packages.



**Taking Your Printing
Beyond the Ordinary**

Océ North America

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